

JUDGE'S COPY

NOV 18 1981

H. STUART CUNNINGHAM
CLERK, U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

81 C6434

ATARI, INC.,

a Delaware corporation, and

MIDWAY MFG. CO.

an Illinois Corporation

Plaintiffs,

vs.

Civil Action No.

NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,

a Tennessee corporation, and

PARK TELEVISION d/b/a
PARK MAGNAVOX HOME ENTERTAINMENT
CENTER,

an Illinois partnership,

Defendants.

VERIFIED COMPLAINT

Plaintiffs ATARI, INC., and MIDWAY MFG. CO. for their
complaint against defendants NORTH AMERICAN PHILIPS CONSUMER
ELECTRONICS CORP. and PARK TELEVISION d/b/a PARK MAGNAVOX HOME
ENTERTAINMENT CENTER, state:

PARTIES

1. Plaintiff, ATARI, INC. ("ATARI"), is a Delaware
corporation with its principal place of business in Sunnyvale,
California. ATARI is a leading developer and manufacturer of

home video games and personal computers. ATARI owns the exclusive rights under copyrights to numerous audiovisual works, including the exclusive rights in the United States for home video and personal computer use for the "PAC-MAN" video game described below. Plaintiff MIDWAY MFG. CO. ("MIDWAY") is an Illinois corporation with its principal place of business at Franklin Park, Illinois. MIDWAY is a leading developer and manufacturer of coin-operated video games. MIDWAY owns exclusive rights under copyrights to numerous audiovisual works and is the owner of the United States copyright to the "Pac-Man" audiovisual work described below.

2. On information and belief, defendant NORTH AMERICAN PHILIPS CONSUMER ELECTRONICS CORP. ("NORTH AMERICAN") is a Tennessee corporation, with its principal place of business in Knoxville, Tennessee. NORTH AMERICAN has an office and place of business in this district at 7500 Frontage Road, Skokie, Illinois 60077. NORTH AMERICAN manufactures and sells home video games, including the "K.C. MUNCHKIN" home video game described below.

3. On information and belief, defendant PARK MAGNAVOX HOME ENTERTAINMENT CENTER ("PARK") is an Illinois Corporation with its principal office and place of business at 3634 West 95th St., Evergreen Park, Illinois 60642. Park is a retailer of audio visual equipment including home video games such as NORTH AMERICAN'S "K.C. MUNCHKIN" video game.

JURISDICTION AND VENUE

4. The claims made in this Verified Complaint arise under the Copyright Laws of the United States, 17 U.S.C. §§101

et seq., the Illinois Uniform Deceptive Trade Practices Act, Ill.Rev.Stat. Ch. 121-1/2, §§311-317, and the common law. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331(a)(2) and 1338(a) and has pendant jurisdiction over the state law claims under 28 U.S.C. §1338(b). Venue is proper under 28 U.S.C. §§1391(d) and 1400(a). Acts giving rise to the causes of action alleged herein have occurred, and are occurring, in the this district.

FACTS

5. Before May 22, 1980, Namco Limited, a Japanese company created an original audiovisual work titled "PAC-MAN." "PAC-MAN" is a wholly original work of authorship with Namco Limited and comprises copyrightable subject matter under the copyright laws of the United States, Title 17, United States Code.

6. Namco Limited assigned "the entire right, title, and interest" in statutory copyright in the United States and the Western Hemisphere to MIDWAY by an "Assignment of Copyrights", dated October 10, 1980 and recorded in the Copyright Office.

7. MIDWAY fully complied with the copyright laws and all other laws applicable to the "PAC-MAN" work. The Register of Copyrights has issued to MIDWAY a certificate of copyright registration for the "Pac-Man Audiovisual Work," Reg. No. PA 83-768, effective November 13, 1980. A copy of Certificate of Registration No. PA 83-768 is attached to this Verified Complaint as Exhibit A.

8. By agreement effective as of April 27, 1981, MIDWAY granted Namco-America, Inc. an exclusive license under the "PAC-MAN" copyright and trademark for home video and personal computer use. By agreement also effective as of April 27, 1981 Namco-America, Inc. granted to ATARI the exclusive right in the United States and its territories in the copyright and trademark for the "PAC-MAN" audiovisual work for home video games and personal computers including exclusive rights under Certificate of Registration No. 83-768. An agreement transferring to ATARI the exclusive rights under copyright in the "PAC-MAN" audiovisual work was filed with the Copyright Office for recordation on November 12, 1981. A copy of the agreement recording the transfer rights to Atari in the Copyright Office is attached to this Verified Complaint as Exhibit B.

9. ATARI holds the exclusive right under all copyrights to the "PAC-MAN" audiovisual work for home video games and personal computers in the United States and its territories. The Exhibit B Agreement also granted to ATARI exclusive license rights to the trademark "PAC-MAN" for use on or in connection with home video games and personal computers in the United States. ATARI has announced the introduction and will introduce the ATARI "PAC-MAN" home video game throughout the United States during 1982.

10. NORTH AMERICAN has infringed the copyright in the "PAC-MAN" audio visual work by reproducing, selling and otherwise distributing unauthorized copies of or a derivative work of the "PAC-MAN" audiovisual work under the name

"K.C. MUNCHKIN" and, on information and belief, by performing and displaying NORTH AMERICAN's infringing "K.C. MUNCHKIN" home video game.

11. NORTH AMERICAN is currently advertising, distributing, and selling its infringing "K.C. MUNCHKIN" home video game on a nationwide basis. A full page color advertisement for the "K.C. MUNCHKIN" home video game appeared in the November 16, 1981 issue of Newsweek magazine. A copy of the advertisement is attached to this Verified Complaint as Exhibit C. On information and belief, NORTH AMERICAN has made arrangements for additional national advertising for its infringing "K.C. MUNCHKIN" home video game in Time, People and various inflight airline magazines.

12. NORTH AMERICAN's advertising, marketing, and distributing for retail sale its infringing "K.C. MUNCHKIN" home video game have provided and are currently providing NORTH AMERICAN's distributors and retail dealers with the instrumentality and opportunity to engage in deceptive and unfair trade practices and, on information and belief, NORTH AMERICAN has caused such deceptive and unfair trade practices to occur. These deceptive and unfair trade practices include passing off the "K.C. MUNCHKIN" home video game as a "PAC-MAN" game; causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of "K.C. MUNCHKIN" home video game; causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by plaintiffs; and otherwise engaging in

conduct which creates a likelihood of confusion or of misunderstanding. In addition, NORTH AMERICAN's distribution for retail sale of its infringing "K.C. MUNCHKIN" home video game has provided and is currently providing NORTH AMERICAN's distributors and retail dealers with the instrumentality and opportunity to infringe the "PAC-MAN" copyright and the "PAC-MAN" trademark.

13. NORTH AMERICAN'S distributors have and are currently holding out the "K.C. MUNCHKIN" home video game as a "PAC-MAN" Game as shown on the advertisement from the November 13, 1981 issue of the Chicago Sun-Times, a copy of which is attached to this Verified Complaint as Exhibit D. On information and belief, NORTH AMERICAN and its distributors have otherwise passed the "K.C. MUNCHKIN" home video game off as the "PAC-MAN" home video game, have otherwise unfairly competed with ATARI, and have confused and deceived consumers.

14. NORTH AMERICAN's infringement of the "PAC-MAN" copyright and its unfair and deceptive trade practices in relation thereto have been willful and deliberate and will continue to plaintiffs' irreparable harm unless enjoined by this Court.

15. Defendant PARK has infringed the copyright in the "PAC-MAN" audiovisual work by selling and otherwise distributing the "K.C. MUNCHKIN" home video game and, on information and belief, by performing and displaying the "K.C. MUNCHKIN" home video game.

16. ATARI has notified NORTH AMERICAN of its infringement of ATARI's exclusive right in the "PAC-MAN" copyright and of its other violations herein alleged and of the filing of this action.

COUNT ONE

Copyright Infringement

17. Paragraphs 1 through 16 are incorporated by reference.

18. The aforesaid acts of NORTH AMERICAN and PARK constitute copyright infringement in violation of 17 U.S.C. §§106 and 501.

COUNT TWO

Deceptive Trade Practices

19. Paragraphs 1 through 16 are incorporated by reference.

20. The aforesaid acts of NORTH AMERICAN and PARK constitute deceptive trade practices in violation of the Illinois Uniform Deceptive Trade Practices Act, Ill.Rev.Stat. Ch. 121-1/2, §§311-317.

COUNT THREE

Common Law Unfair Competition

21. Paragraphs 1 through 16 are incorporated by reference.

22. The aforesaid acts of NORTH AMERICAN and PARK constitute improper and unfair competition with plaintiffs in violation of plaintiffs' rights at common law.

PRAYER OF RELIEF

WHEREFORE, plaintiffs pray that this Court:

(a) declare that defendants NORTH AMERICAN and PARK have infringed the "PAC-MAN" copyright;

(b) temporarily restrain and preliminarily and permanently enjoin defendants NORTH AMERICAN and PARK and all their employees, servants, agents, distributors and persons in active concert with them from displaying, performing, advertising, promoting, selling or offering for sale, or otherwise distributing the "K.C. Munchkin" video game or otherwise infringing the "PAC-MAN" copyright;

(c) order the impounding for destruction all copies or reproductions of NORTH AMERICAN's infringing "K.C. MUNCHKIN" home video games, and all plates, masters, tapes, film negatives, cassettes, circuit boards, computer programs and other means for producing such copies, and all advertisements and promotional literature therefor;

(d) order that NORTH AMERICAN immediately require its distributors to cease and desist all advertising, marketing, offering for sale and selling of "K.C. MUNCHKIN" home video game;

(e) order NORTH AMERICAN to recall from its distributors all copies or reproduction of the "K.C. MUNCHKIN" home video game;

(f) order an accounting of NORTH AMERICAN's and PARK's profits and award plaintiffs their actual and/or statutory damages including treble damages for willful violation;

(g) award plaintiffs punitive damages for the willful and wanton nature of NORTH AMERICAN's acts equal to at least three times plaintiffs' actual or statutory damages;

(h) order that NORTH AMERICAN and PARK file with this Court, and to serve upon plaintiffs within ten (10) days after service upon NORTH AMERICAN and PARK of this Court's injunction issued in this action, a written report under oath setting forth in detail the manner and form in which NORTH AMERICAN and PARK have complied with such injunction;

(i) award plaintiffs interest, costs, and attorney's fees; and

(j) award plaintiffs such other and further relief
as this Court deems just and appropriate.

DATED: November 18, 1981

Respectfully submitted,

/s/

Daniel W. Vittum, Jr.
Robert G. Krupka
David E. Springer
Martin L. Lagod

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

ATTORNEYS FOR PLAINTIFF
ATARI, INC.

/s/

Eric C. Cohen
A. Sidney Katz
Donald L. Welsh
FITCH, EVEN, TABIN,
FLANNERY & WELSH
135 South LaSalle Street
Suite 900
Chicago, Illinois 60603
(312) 372-7842

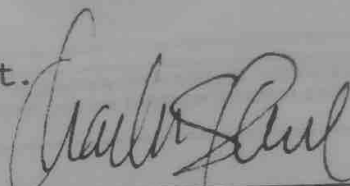
ATTORNEYS FOR PLAINTIFF
MIDWAY MFG. CO.

STATE OF ILLINOIS
COUNTY OF COOK

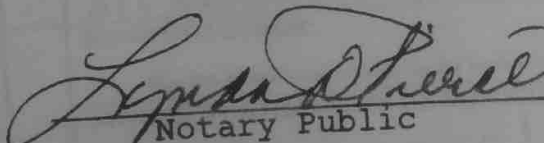
Affidavit of Verification

CHARLES S. PAUL, being first duly sworn on oath, states that he is Senior Vice President and General Counsel of plaintiff, Atari, Inc.; that he has personal knowledge of the matters set forth in the preceeding Verified Complaint; and that the allegations set forth in the preceeding Verified Complaint are true and correct with the exception of the allegations made on information and belief which he believes to be true.

Further Affiant Saith Not.


Charles S. Paul

Subscribed to and Sworn
before me this 24 day
of November, 1981.


Notary Public

This certificate, issued under the ^{of the Copyright} Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

Wanda L. Lude

REGISTER OF COPYRIGHTS
United States of America

REGISTRATION NUMBER
PA 7 ... 83- PA
EFFECTIVE DATE OF REGISTRATION
Nov. 13 Month Day

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE CONTINUATION SHEET (FORM PA/CON)

TITLE OF THIS WORK:

PAC-MAN

NATURE OF THIS WORK:
(See instructions)

Audiovisual work

PREVIOUS OR ALTERNATIVE TITLES:

PUCKMAN

IMPORTANT:

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). If any part of the work was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) the name of that part, and leave the space for dates blank.

NAME OF AUTHOR:

Namco Limited

Was this author's contribution to the work a "work made for hire"? Yes ☒ No ☐

DATES OF BIRTH AND

Born ... Died ...
(Year)

AUTHOR'S NATIONALITY OR DOMICILE:

Citizen of ... } or { Domiciled in Japan
(Name of Country) (Name of Country)

AUTHOR OF: (Briefly describe nature of this author's contribution)

All cinematographic material

WAS THIS AUTHOR'S CONTRIBUTION

THE WORK:
Anonymous? Yes ☐ No ☐
Pseudonymous? Yes ☐ No ☐

If the answer to either of these questions is "Yes" see detailed instructions attached

NAME OF AUTHOR:

Was this author's contribution to the work a "work made for hire"? Yes ☐ No ☐

AUTHOR'S NATIONALITY OR DOMICILE:

Citizen of ... } or { Domiciled in ...
(Name of Country) (Name of Country)

AUTHOR OF: (Briefly describe nature of this author's contribution)

WAS THIS AUTHOR'S CONTRIBUTION

THE WORK:
Anonymous? Yes ☐ No ☐
Pseudonymous? Yes ☐ No ☐

If the answer to either of these questions is "Yes" see detailed instructions attached

NAME OF AUTHOR:

Was this author's contribution to the work a "work made for hire"? Yes ☐ No ☐

AUTHOR'S NATIONALITY OR DOMICILE:

Citizen of ... } or { Domiciled in ...
(Name of Country) (Name of Country)

AUTHOR OF: (Briefly describe nature of this author's contribution)

WAS THIS AUTHOR'S CONTRIBUTION

THE WORK:
Anonymous? Yes ☐ No ☐
Pseudonymous? Yes ☐ No ☐

If the answer to either of these questions is "Yes" see detailed instructions attached

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED:

Year 1980...

(This information must be given in all cases)

DATE AND NATION OF FIRST PUBLICATION:

Date ... May 22 ... 1980
(Month) (Day) (Year)

Nation ... Japan ...
(Name of Country)

(Complete this block ONLY if this work has been published)

NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S):

Midway Mfg. Co., 10750 W. Grand Avenue
Franklin Park, Illinois 60131

EXHIBIT A

TRANSFER: (If the copyright claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of the claimant(s) obtained ownership of the copyright.)
Namco Limited assigned "the entire right, title, and interest" in statutory copyright in the United States of America to Midway Mfg. Co.

EXAMINED BY... <i>UV</i>	APPLICATION RECEIVED: 13 NOV 1980
CHECKED BY.....	DEPOSIT RECEIVED: 13 NOV 1980
CORRESPONDENCE: <input type="checkbox"/> Yes	REMITTANCE NUMBER AND DATE: 30401 <i>UBSpec</i>
DEPOSIT ACCOUNT FUNDS USED: <input type="checkbox"/>	

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED ADDITIONAL SPACE, USE CONTINUATION SHEET (FORM PA/CO)

PREVIOUS REGISTRATION:

- Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? Yes..... No **X**
- If your answer is "Yes," why is another registration being sought? (Check appropriate box)
 - ☐ This is the first published edition of a work previously registered in unpublished form.
 - ☐ This is the first application submitted by this author as copyright claimant.
 - ☐ This is a changed version of the work, as shown by line 6 of the application.
- If your answer is "Yes," give: Previous Registration Number Year of Registration

COMPILATION OR DERIVATIVE WORK: (See Instructions)

PREEXISTING MATERIAL: (Identify any preexisting work or works that the work is based on or incorporates.)

..... None

MATERIAL ADDED TO THIS WORK: (Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.)

.....

DEPOSIT ACCOUNT: (If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.)

Name

Account Number

CORRESPONDENCE: (Give name and address to which correspondence about this application should be sent.)

Craig E. Larson, DePaoli & O'Brien

Name

Address... 1911 Jeff. Davis, Hwy., #1005

Arlington, VA 22202

CERTIFICATION: * I, the undersigned, hereby certify that I am the: (Check one)

- ☐ author ☐ other copyright claimant ☐ owner of exclusive right(s) ☒ authorized agent of... *Midway Mfg. Co.*

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.



Handwritten signature: (X) *Craig E. Larson*

Typed or printed name: Craig E. Larson

Date: March 6, 1980

CRAIG E. LARSON

1911 Jeff. Davis Hwy, #1005

Arlington, VA 22202

MAIL
CERTIFICATE
TO

CONTINUATION SHEET FOR FORM PA

FORM PA/C
UNITED STATES COPYRIGHT

2. try to fit the information called for into the spaces on Form PA.

3. Leave space enough for all of the information you need on Form PA, use this continuation sheet and submit it with

4. This continuation sheet, leave it attached to Form PA. If the sheet is detached, clip (do not tape or staple) and fold the sheet before submitting them.

5. This sheet is intended to identify the basic application. Space 2, PART C is for the continuation of Space 2. PART C is for the continuation of Space 4, or 6. The other spaces on Form PA call for specific information, and should not need continuation.

REGISTRATION NUMBER	
PA 1 ... 83-	PAU
EFFECTIVE DATE OF REGISTRATION	
Nov. ... 13 ... 1980	(Month) (Day) (Year)
CONTINUATION SHEET RECEIVED	
13 NOV. 1980	
Page 3 of 3 pages	

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

IDENTIFICATION OF CONTINUATION SHEET: This sheet is a continuation of the application for copyright registration on Form PA, submitted the following work:

- TITLE: (Give the title as given under the heading "Title of this Work" in Space 1 of Form PA.)
- NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S): (Give the name and address of at least one copyright claimant as in Space 4 of Form PA.)

Continuation of Space 2	NAME OF AUTHOR:	Was this author's contribution to the work a "work made for hire"? Yes No	DATES OF BIRTH AND DEATH: Born ... Died ... (year)
	AUTHOR'S NATIONALITY OR DOMICILE:	Citizen of ... or Domiciled in ... (Name of Country)	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes No Pseudonymous? Yes No If the answer to either of these questions is "Yes," see detailed instructions attached.
	AUTHOR OF: (Briefly describe nature of this author's contribution)		
Continuation of Space 2	NAME OF AUTHOR:	Was this author's contribution to the work a "work made for hire"? Yes No	DATES OF BIRTH AND DEATH: Born ... Died ... (year)
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Continuation of Space 2	NAME OF AUTHOR:	Was this author's contribution to the work a "work made for hire"? Yes No	DATES OF BIRTH AND DEATH: Born ... Died ... (year)
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	AUTHOR OF: (Briefly describe nature of this author's contribution)		

CONTINUATION OF (Check which): ☐ Space 1 ☒ Space 4 ☐ Space 6

Continuation of other Spaces

Western hemisphere in and to a certain amusement game known as "Pac-Man" or "Puckman" in an ASSIGNMENT OF COPYRIGHTS dated October 10, 1980 (said ASSIGNMENT is being recorded concurrently with this application).

WHEREAS, Namco-America, Inc. ("Licensor") is the exclusive licensee in the United States of America and its territories and possessions of the copyrights in the works listed on the attached Exhibit A, and of the trademarks set forth on the attached Exhibit A, for home video games and personal computers, together with the right to grant sub-licenses thereunder; and

WHEREAS, Atari, Inc. ("Licensee") is desirous of obtaining an exclusive sublicense to the said copyrights and trademarks in the United States of America and its territories and possessions, for home video games and personal computers;

NOW, THEREFORE, for a valuable consideration, the receipt of which is hereby acknowledged, Licensor hereby grants to Licensee an exclusive sublicense in the United States of America and its territories and possessions, for home video games and personal computers, under the copyrights in the works listed on the attached Exhibit A, and under the trademarks set forth on the attached Exhibit A, and Licensee agrees that Licensor may control Licensee in respect of the nature and quality of the goods with which said trademarks are used.

Dated as of the 27 day of April, 1981.

NAMCO-AMERICA, INC.
Licensor

By *Shigeaki Nishikawa*
Title PRESIDENT

Date of Signature: NOV. 10, 1981

State of California)

ss

County of Santa Clara)

On this 10 day of NOVEMBER, 1981, before me personally appeared HIDEYUKI AKAJIMA, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of NAMCO-AMERICA, INC.



Mary A. Haycock
Notary Public

My Commission expires:

OCT 4, 1982

ATARI, INC.
Licensee

By Charles Paul

Title pres. vice president

State of California)

ss

County of Santa Clara)

On this 10 day of NOVEMBER, 1981, before me personally appeared CHARLES S. PAUL, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of ATARI, INC.



Mary A. Haycock
Notary Public

My Commission expires:

OCT 4, 1982